IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/04/2003

CORAM

THE HONOURABLE Mr. JUSTICE E. PADMANABHAN
AND
THE HONOURABLE Mr. JUSTICE M. THANIKACHALAM

A.S.No. 474 of 1993 and A.S. NO.512 of 1997

Cross Objection No.87 of 1994
and
all connected pending C.M.Ps.

A.S.No.474 of 1993:

Revenue Divisional Officer,
Mettur. .... Appellant

-Vs-

N. Swaminathan .... Respondent

A.S.No.512 of 1997:

1. The Land Acquisition Officer,
Salem

2. The Assistant Director of Agriculture,
State Seed Form, Omalur,
Salem District. .... Appellants

Vs.

1. K. Angudurai
2. Alameluammal
3. K.P. Mohanasundaram
4. N. Swminathan
5. Ramasamy
6. Rajammal
7. Varathappan
8. Manickam .... Respondents

Cross Objection No.87 of 1994 in A.S.No.474 of 1993

N. Swaminathan .... Cross Objector

Vs.

Revenue Divisional Officer,
Mettur .... Respondent

A.S.No.474 of 1993:

Appeal filed against Judgment and decree dated 10th August 1992 made in L.A.O.P.No.116 of 1991 on the file of learned Subordinate Judge, Sankari.

A.S.No.512 of 1997:

Appeal against judgment and decree dated 17th April 1996 made in L.A.O.P.No.1 of 1995 on the file of learned Subordinate Judge, Salem.

Cross Objection No.87 of 1994 in A.S.No.474 of 1993:
Cross Objection filed against the judgment and decree dated 10th August 1992 made in L.A.O.P.No.116 of 1991 on the file of learned Subordinate Judge, Sankari.

!For Appellants : Mr. Ashokan, Addl. G.P.
in both appeals assisted by V. Karthikeyan
and respondent in Government Advocate,
cross objection (Housing Board)

^For Respondents
in A.S.No.474/93 : Mr. B.T. Seshadri
and cross objector
Mr. S. Subbiah R2&3 in
A.S.No.512 of 1997
Mr. ARL. Sundaresan R4 in
A.S.No.512 of 1997
Mr. G. Jeremiah R7 & 8 in
A.s.No.512 of 1997
Mr. P. Jagadeesan R5 & 6 in
A.S.No.512 of 1997

:J U D G M E N T

E. PADMANABHAN,J

A.S.No.474 of 1993 has been preferred by the Land Acquisition Officer Revenue Divisional Officer, Mettur challenging the entire enhancement of compensation awarded by the learned Subordinate Judge of Sankari by judgment and award dated 10t 92 made in L.A.O.P.No.116 of 1991.

2. Mr. N. Swaminathan, sole respondent in A.S.No.474 of 1993 has filed cross objection No.87 of 1994, in so far as the learned Subordinate Judge of Sankari in L.A.O.P.No.116 of 1991 has disallowed the portion of the claim for enhanced comp aimed by the cross objector in the said L.A.O.P. Since A.S.No.474 of 1993 and Cross Objection arise out of the same common judgment and award, they are taken up together for hearing.

3. A.S.No.512 of 1997 has been preferred by the Land Acquisition Officer, Salem and the Assistant Director of Agriculture, State Seed Farm of Salem as against the judgment and award dated 17th April 1996 made in L.A.O.P.No.1 of 1995 on the Subordinate Judge of Salem. No cross objection has been preferred by any one of the eight respondents in this appeal.

4. The subject matter of acquisition in both the appeals arise out of one and the same Notification issued under Section 4(1) of the Land Acquisition Act and in respect of contiguous lands. Therefore, at the instance of learned Additional Pleader and the counsel for the respondents in both the appeals, the above two appeals and one Cross Objection were consolidated and taken up together for final hearing.

5. Heard Mr. Ashokan Additional Government Pleader and Mr.V. Karthikeyan, Government Advocate appearing for the appellants in both the appeals as well as respondent in Cross Objection No.87 of 1994, Mr. B.T.

Seshadri, learned counsel appear respondent in A.S.No.474 of 1993 and Cross Objector in Cross Objection No.87 of 1994 , M/s. Subbiah; ARL. Sundaresan; P. Jagadeesan; G. Jermiah for respondents in A.S.No.512 of 1997.

6. For the formation of Government Coconut Farm in Danishpet Village, at the instance of the Assistant Director, Agriculture (Oil Seeds), Salem, lands were acquired. Notification was issued under Section 4(1) of the Land Acquisition Act in 139 Agriculture (Oil Seeds) Department, dated 19.02.1990, published in Government Gazette dated 19.02.1990. The lands were already under the occupation of the beneficiary even before issuance of Notification under Section 4(1) of the Act pursuant to the proceedings of requisition ordered under Tamilnadu Requisitioning and Acquisition of Immovable Property Act 1956. There were certain proceedings by the land owners and as a result of directions issued by the Division Bench of this court, the acquisitio n of lands were undertaken under The Land Acquisition Act 1894. Notification under Section 4(1) of the Act was published on 19.02.1990; Section 6 Declaration was published on 19.09.1990. Award was passed in Award No.2 of 1991 in respect of the followin g lands:

Survey No. Extent in Hectares

242/2B 1.12.0
243/1 2.55.0
243/2 1.12.5
244 2.62.0
297/1 2.25.00

Total 9.66.5

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7. In respect of the above 9.66.5 hectares, the Land Acquisition Officer awarded a total compensation of Rs.17,19,670/- while fixing the market value of the acquired land at the rate of Rs.44,958/- per acre, which works out to Rs.449.58 per

8. The land owner N.Swaminathan claimed the market value at the rate of Rs.2,50,000/- per acre. At the instance of land owner, a reference was made under Section 18 of the Land Acquisition Act in respect of the above 9.66.5 hectares, being t matter of award No.2 of 1991 dated 23.03.1991 in L.A.O.P.No.116 of 1991 on the file of the learned Subordinate Judge, Sankari.

9. The learned Subordinate Judge, Sankari fixed the market value of the acquired land at Rs.85,000/- per acre by judgment and award dated 10.08.1992. Challenging the enhancement, the Land Acquisition Officer has preferred A.S.No.474 of 199 and owner has preferred Cross Objection in Cross Objection No.87 of 1994. In the Cross Objection, the land owner prayed for that the market value of the acquired land be fixed at Rs.1,50,000/-.

10. In respect of the remaining land covered by the same Section 4(1) Notification dated 19.02.1990, separate award was passed by the Land Acquisition Officer in Award No.3 of 1991 on 24.03.1991. This award covered in all measuring 25.16.5 f land owned by eight different individuals. The Land Acquisition Officer fixed the market value of wet lands measuring 7.61.0 hectares at Rs.60,000/- per acre, for irrigated dry lands measuring 16.0.00 hectares, the Land Acquisition Officer fixed the m arket value at Rs.44,958/- per acre and in respect of Manavari dry lands measuring 1.55.5 hectares, the market value was fixed at 34,951/- per acre besides usual solatium and interest. The Land Acquisition Officer awarded a total compensation of Rs.49,52 ,888/-, which includes 12% additional amount as well.

11. The following lands which are the subject matter of L.A.O.P.No.1 of 1995 and in all it measures 25.16.5 hectares.

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Survey No. Extent in Hectares
299/1 0.71.5 Wet
299/2 1.41.5 Wet
308/1 0.56.0 Wet
308/2 0.06.0 Wet
308/3 1.16.0 Wet
310/1 0.52.0 Wet

310/2 0.03.0 Wet
310/3 0.23.5 Wet
310/4 0.06.5 Wet
310/5 0.24.5 Wet
310/6 0.48.5 Wet
313/1 0.11.0 Wet
313/2 2.01.0 Wet
302/2 0.09.0 irrigated dry
302/3 0.06.5 "
304 3.36.0 "
305/1A 0.22.0 "
305/1B 2.46.0 "
305/2 1.04.0 "
309/1B 0.28.0 "
309/1C 0.12.0 "
309/1D 0.15.0 "
309/3 0.46.5 "
325 3.74.5 "
330 4.00.0 "
305/2A 0.02.0 Manavari dry
309/1A 0.01.0 "
309/1E 1.37.5 "
309/1F 0.09.5 "
309/1G 0.05.5 "

Total 25.16.5

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12. At the instance of the eight land owners, a reference was made in L.A.O.P.No.1 of 1995 on the file of the learned Subordinate Judge of Salem under Section 18 of The Land Acquisition Act 1894.

13. The learned Subordinate Judge fixed the market value at the rate of Rs.95,000/- per acre for wet lands; Rs.85,000/- per acre for irrigated dry lands and Rs.75,000/- per acre for manavari dry lands with usual solatium, interest and compe

14. Challenging the said enhancement, the Land Acquisition Officer has preferred the appeal. The land owners have not preferred any cross objection nor they have preferred any separate appeals seeking for enhancement of compensation over a e compensation awarded by the learned Subordinate Judge of Salem.

15. In both the appeals, the crucial date for fixing the market value of the land is one and the same, namely, 19.02.1990, which is the date of Notification issued under Section 4(1) of the Act. For convenience, separate award came to be p herefore, there has been separate reference under Section 18 of the Act and hence separate appeals.

16. In A.S.No.474 of 1993, separate compensation has been awarded for the wells as well as towards certain developments and trees.

17. In L.A.O.P.No.1 of 1995, the claimants (which is the subject matter in A.S.No.512 of 1997) marked Exs.A1 to A17, the Referring Officer marked Exs.B1 to B17 besides Exs.C1 to C5, which are the Court exhibits. The claimants examined them .W.1 to P.W.8, while the respondent examined R.W.1 to R.W.4.

18. In L.A.O.P.No.116 of 1991, against which A.S.No.474 of 1993 has been preferred, the claimants marked Exs.A1 to A12 besides examining four witnesses, while the Land Acquisition Officer (Referring Officer) marked Exs.B1 to B5 and examined ses. That apart one Court exhibit has been marked as Ex.C.1.

19. Ex.A1 in L.A.O.P.No.1 of 1995 is the judgment in L.A.O.P.No.116 of 1991 on the file of the Subordinate Judge, Sankari against which the appeal in A.S.No.474 of 1993 has been preferred. Ex.A2 dated 23.10.1989, Ex.A3 dated 30.10.1989 and d 30.10.1989 are the sale deeds relied upon in L.A.O.P.No.1 of 1995, while the very same sale deeds have been marked as exhibits A2, A3 and A1 in the other L.A.O.P. In other words same set of documents are being relied upon to substantiate the claim of market value by the claimants in both the appeals.

20. Exs.A2 and A3, sale deeds respectively dated 23.10.1989 and 30.10.1989 relates to Survey Nos. 223/3 and 38/3 and the sale consideration paid under the said two documents respectively being Rs.85,000/- and Rs.90,000/- per acre. The Land Officer has rejected Exs. A2 and A3, since the sale transactions were between close relatives and it is sold at a higher rate. Even though the sale transactions were one year prior to Notification under Section 4(1) of the Act, Exs. A2 and A3 have been held to be genuine sale transaction according to the learned Subordinate Judge. The sale consideration recited in Exs.A2 and A3 as deposed by R.W.1 is in conformity with the guideline values fixed by the Registration Department.

21. Apart from the said three documents, Exs.A15 to A17 respectively dated 07.11.1988, 24.01.1990 and 19.02.1990 were relied upon and marked in L.A.O.P.No.1 of 1995, which sale transaction were two years prior to Notification under Section Act. As far as Ex.A.16 is concerned, the Land Acquisition Officer, who was examined as R.W.1 has deposed that the value of the wet lands would be Rs.10,000/- higher than the value of the irrigated dry lands and the value of manavari dry lands would be Rs.10,000/- less than the value of irrigated dry lands. But there is documentary evidence to substantiate such a reference.

22. The learned subordinate judge in L.A.O.P.No.1 of 1995 fixed the market value of the acquired land based upon Ex.A.2, sale transaction, by adding Rs.10,000/- per acre in respect of wet lands and deducting Rs.10,000/- in respect of dry la ourt below had declined the award of separate compensation for the wells but awarded compensation towards cement

concrete channels and pipe lines. The learned Subordinate Judge also awarded interest from 18.03.1960, the date of taking possession less th e amount already received as lease/compensation, even though Section 4(1) Notification in respect of the lands came to be issued only on 19.02.1990.

23. The learned Subordinate Judge in L.A.O.P.No.116 of 1991 fixed the market value of the acquired land at Rs.84,000/-, awarded Rs.2,00,000/- towards pipe line and Rs.8,700/- towards two wells and interest from 18.03.1960, the date on which sion was taken by the State farm. In fact 9% interest was awarded for the period from 18.03.1960 to 17.03.1961 and for the period subsequent to 18.03.1961, the learned Subordinate Judge awarded 15% interest.

24. Challenging both the awards, the present appeals have been preferred.

25. In these appeals, the following points arise for consideration was
i) Whether the classification of land into dry, irrigated dry and wet land is sustainable?
ii) What is the prevailing market value of the acquired land as on 19.02.1990 the date of Notification under Section 4(1) of the Act in

respect of the three categories of lands?
iii) Whether the claimants are entitled to compensation towards Well?

iv) Whether the claimants are entitled for compensation towards improvements like underground pipe lines, Channels etc.?
v) From which date the claimants are entitled to payment of interest under Section 34 of The Land Acquisition Act?
vi) Whether the claimants are entitled for a direction under Section 23(1-A) of the Land Acquisition Act?
Vii) Whether the claimants are entitled to solatium? If so, at what rate?
Viii) Whether the claimants are entitled to payment of interest on solatium?
ix) To what result, if any in the appeals?
x) To what result, if any in the Cross Objection?

26. As regards the first point for consideration, the Land Acquisition Officer himself in his award No.3 of 1991 dated 07.02.1990 categorised the land, which are the subject matter of the said award into three categories, viz., wet, irrigat manavari dry. The lands have also been assessed as wet, irrigated dry and manavari dry. Therefore, in respect of lands, which are the subject matter of L.A.O.P.No.1 of 1995 and A.S.No.512 of 1997, the classification, as recorded by the Land Acquisition Officer has also been affirmed by the Court below. In fact the Land Acquisition Officer himself has fixed the market value of the acquired land at the rate of Rs.60,000/- per acre for wet land; Rs.44,958/- per acre for irrigated dry

lands and Rs.34,951/ - per acre towards manavari dry lands. Both the sides, have not advanced contentions challenging the said classification. So also, in respect of the land, which is the subject matter of award No.2 of 1991, the revenue classification is only dry lands th ough admittedly there are wells. Hence on the first point, the classification as adopted by Land Acquisition Officer and affirmed by learned Subordinate Judge in the both the L.A.O.Ps.deserves to be confirmed in these appeals. The point is answered acco rdingly.

27. As regards the second point what was the prevailing market value of the acquired land on the date of Notification under Section 4(1) of the Act, which date is common in both the appeals. The oral evidence let in by either side is not o stance nor the tall claims made by the witnesses could be accepted at all. The witnesses have made tall claims, but without any basis. The only basis on which the market value could be arrived at being Exs.A2 and A3 in L.A.O.P.No.1 of 1995 and correspo nding document has also been marked in the other L.A.O.P. Apart from Exs.A1 and A2, Ex.A.15, A.16 and A.17 are also pressed into service. Under Ex.A.2 dated 23.10.1989, Survey No.223/3 of the same Danishpet Village measuring 60 cents was conveyed for a consideration of Rs.51,000/- and this being relied upon by the land owners to contend that the market value works out to Rs.85,000/- per acre.

28. The Land Acquisition Officer has rejected the said Ex.A.1 as it is between close relatives. Ex.A.15 dated 07.11.1988 is a sale deed executed by A. Kallannan in favour of Venkatachalam in respect of Survey No.242/2B. Ex.A.16 dated 24.0 sale deed executed by Govinda gounder and another in favour of Marimuthu measuring 1.01 acres in Survey No.242/B for a sale consideration of Rs.44,958/-. Apart from the said exhibits, Exs. A3 and A4 both dated 30.10.1989 executed by one C. Velayudham in favour of Thenmozhi marked in L.A.O.P.No.1 of 1995 are being relied upon. Ex.A.15 in L.A.O.P.No.1 of 1995, which is equivalent to Ex.A.1 in L.A.O.P.No.116 of 1991 is a sale deed dated 7th November 1988 conveying R.S.No.242/1B and 242/2 at measuring 1 acre and 19 cents for a consideration of Rs.53,550/-, which works out to Rs.44,958/- per acre. The survey numbers, namely, 242/1B and 242/2 of Danishpet village, as seen from Ex.B.2, Sketch/Plan and sub-division there of are far North of the acquired lands further just one acre 19 cents was the subject of matter of conveyance, which extent when compared to the large extent of acquired land is a small piece of land. When small extent of lands are being sold, there will be number of purchasers when co mpared to large extent of lands for which, there will be only few purchasers. Ex.B.2 in L.A.O.P.No.116 of 1991 is equivalent to Ex.A.16 in L.A.O.P.No.1 of 1995 is a sale deed dated 24th of January 1990 for a consideration of Rs.50,000/- in respect of R .S.No.245/1A measuring 1.43 acres out of 2.93 acres. The said Survey number 245/1 is located further North of R.S.No.244 and on cart track and south of a Pond (kuttai).

29. Ex.A2 in L.A.O.P.No.116 of 1991 dated 30th October 1989 (equivalent to Ex.A3 in L.A.O.P.No.1 of 1995) is a deed of conveyance by one Velayudham in favour of Thenmozhi for a consideration of Rs.46,800/- in respect of lands comprised in R B measuring 52 cents. R.S.No.387/2B is far

off from the acquired land and North of the Railway Line and Road, which is in a different locality.

30. Ex.A2, Sale deed dated 23rd October 1989 sold by R.Manickam in favour of M. Balasubramanian for a consideration of Rs.51,000/- in respect of R.S.No.223/3 measuring 60 cents. R.S.No.223/3 is North-east of the acquired land and far off a by very many survey fields. Apart from the above sale transactions Ex.A.1 in L.A.O.P.No.116 of 1991 form the basis of the acquired land, not only it could be taken into consideration to assess the market value in the locality. The Survey number 242 and sub-division is next to two of the survey fields acquired and it works out to Rs.44,958/- per acre. But it is anterior while it is next to the acquired land. All the above sale deeds are taken into consideration and the documents referred to are severa l months earlier in point of time to Section 4(1) Notification and some of them is more than 18 months prior to Section 4(1) Notification and there is nothing to show that there has been an appreciable increase in the market value of the lands in the loc ality.

31. The learned Government Advocate and the counsel appearing for the respondents took us through the Judgment in both the L.A.O.Ps, the common documents relied upon by either side in both the O.Ps as well as the plan and the oral evidence the benefit of considering all the sale transactions relied upon by either side.

32. We have considered the entire documentary and oral evidence, the passage of time and the small extent of the land, which are the subject matter of various sale transactions, their location and relative distance to the acquired land div lway line, while arriving at the market value we have taken into consideration of Exs.A2, A3, A4, A15, A16 and A17 as marked in L.A.O.P.No.1 of 1995 and in particular Exs.B1 and B2 respectively dated 07.11.1988 and 24.01.1990 marked in L.A.O.P.No.116 of 1991 and Ex.A2 dated 30.10.1989 the contiguous extent of large extent of land as well as all relevant circumstances we fix the market value of the acquired land at Rs.51,000/- per acre for dry manavari; Rs.57,000/- per acre for irrigated dry land and Rs. 63,000/- per acre for wet lands. As seen from the said documents as well as the oral evidence let in by either side, we fix the market value at Rs.51,000/- per acre for dry lands; for irrigated dry lands at Rs.57,000/- per acre and for wet lands at Rs.6 3,000/- per acre.

33. As regards the claim of compensation towards well, the learned Subordinate Judge in L.A.O.P.No.1 of 1995, while rightly relying upon the pronouncement of the Supreme Court in A.I.R. 1995 S.C 186 has rightly disallowed the claim separate Well. Well is the source to cultivate the lands.

In O. Janardhan Reddy v. Special Deputy Collector reported in A.I.R. 1995 S.C. 186, the Supreme Court has held thus:

"8.Since estimated construction costs of irrigation wells of agricultural lands cannot form the basis for awarding compensation for such irrigation wells independently of the compensation awardable for the

agricultural lands for the benefit of which h wells existed, the contentions raised by the learned counsel in support of the appellants claim for grant of

enhanced compensation for the irrigation wells with reference to estimated costs of construction of such wells prepared by engineers, do not co mmend acceptance.

9. Irrigation wells for which enhanced compensation is sought in the present appeal are admittedly those which existed in the acquired agricultural lands for which enhanced compensation is awarded by the Civil Court, and the High Court. Question o anting further enhanced compensation for the acquired agricultural lands by this court in this appeal does not arise since this Court has ordered that consideration of this appeal shall be restricted to claim of the appellants for grant of enhanced compe nsation for their irrigation wells.

34. However, in L.A.O.P.No.116 of 1991, the learned Subordinate Judge of Sankari has awarded Rs.1,08,700/- towards well, which award is contrary to law laid down by the pronouncement of the Supreme Court and therefore, the award of compensa e well has to be disallowed and accordingly it is set aside.

35. As regards the improvement, namely laying of cement pipe line and channel in L.A.O.P.No.116 of 1991, the learned Subordinate Judge has awarded Rs.2,00,000/- and assessed the market value of the land as dry land, there is no reason at al ere with the compensation awarded in this respect and in fact no arguments were advanced by the learned Additional Government Pleader in this respect. As there is no challenge to the award of compensation towards pipe line, building underground channel etc. and other structures, we are not inclined to interfere with the award of compensation by the learned Subordinate Judge.

36. Taking up the next point, Mr. B.T. Seshadri appearing for the respondent/cross objector pointed out that the lands were taken possession by the respondent/beneficiary even during 1959/1960 and therefore, interest should be awarded from te. In L.A.O.P.No.1 of 1995, the learned Subordinate Judge has awarded interest under Section 34 of the Land Acquisition Act from 15.10.1959 onwards at the rate of 9%, further directing that payments made towards lease amount shall be adjusted and the b alance be paid, besides directing payment of 12% as additional amount and also awarded 15% interest after one year from the date of taking possession. While in L.A.O.P.No.116 of 1991, the learned Subordinate Judge directed payment under Section 23(1-A) from 18.03.1960 and also directed payment of interest at 9% from 01.06.1958 till 31.05.1969 and thereafter granted interest at 15% from 18.03.1960 onwards, while directing adjustment of payments already made to lease. It is rightly pointed out by the lea rned Additional Government Pleader that payment towards lease to the land owners by the Government Seed Farm is in terms of the provisions of the Tamil Nadu Requisition and Acquisition of Immovable Property Act 1956. It is contended that compensation pa yable under the Said State enactment and of the land owners, who have grievance with respect to non-payment of compensation for theperiod ending

with Section 4(1) Notification, they have to work out their remedy before the competent forum only and not by way of interest under Section 34 of The Land Acquisition Act 1894.

37. According to the learned Government Advocate, liability to interest, if any, in the present case commences from the date of Notification under Section 4(1) of the Act alone and not for any period earlier thereto. As earlier possession rable to present acquisition, but it is under a different provision. If the land owners are having any grievance in respect of non-payment of lease or compensation for deprivation of their possession earlier to Notification under Section 4(1) of the Act , it is rightly contended that the owners have to work out their remedies, if any, under the Tamil Nadu Requisition and Acquisition Act under which possession was taken.

38. Though Mr. B.T. Seshadri sought to sustain the view taken by the learned Subordinate Judge in the respective awards, ultimately in view of the later pronouncement of the Supreme Court in Union of India V. Budh Singh and others necessari dmit that the view taken by the learned Subordinate Judges in the respective awards cannot be sustained.

39. In Union of India Vs. Budh Singh and others reported in 1995(6) SCC 233, the Supreme Court laid down that Court has no power to impose any condition to pay interest in excess of the rate and manner prescribed by the statute as well as f anterior to the publication of Section 4(1) notification under the Act. In that respect the Supreme Court held thus:

"3. The only question that arises for decision is whether the respondents-owners of the lands are entitled to interest at 18% per annum from 15.3.1963, the date on which possession was initially taken, till 15.11.1984, preceding the date on which th tification under Section 4(1) was published. It is a jurisdictional issue and the finding in this behalf touches and trenches into the jurisdictional power of the court, acting under the Act regarding award of interest. The payment of interest under th e Act is squarely covered by the provisions of the Act. The Government, while exercising its power of eminent domain, are entitled to have the notification under Section 4(1) published in the State Gazette. They are also entitled, in case of urgency, to exercise the power under Section 17(4) of the Act and thereon declaration under Section 6 published and would issue notice to the owner of the land under Section 9. On expiry of 15 days thereof, the Government is entitled to take possession from the ow ner. The award would be made under Section 11 thereafter. In case urgency clause under Section 17(4) was not invoked, the procedure of inquiry under Section 5-A shall be gone through and thereafter declaration under Section 6 be made. The declaration gives conclusiveness to the public purpose. After conducting an inquiry in Chapter III of the Act, the Land Acquisition Officer makes the award under Section 11 and gives notice to the owner of the land under Section 16 and on deposit of the compensati on makes payment thereof under Section 31 of the

Act. In case, after taking possession, if the amount is not paid, the provision is made for payment of interest under Section 34 of the Act which reads thus:
"34. Payment of interest When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the t of so taking possession until it shall have been so paid or deposited"

4. Under the proviso after the Amendment Act, if the amount is not paid before one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.

5. The other provision relevant for this purpose is Section 28 of the Act, which empowers the reference court or the High Court for awarding interest on the enhanced compensation from the date of taking possession till date of payment as referred t rein before. Thus, it could be seen that the statute covers the entire field of operation of the liability of the State to make payment of interest and entitlement thereof by the owner when land has been taken over and possession in consequence thereof, the land owner was deprived of the enjoyment thereof. Thus, it could be seen that the court has no power to impose any condition to pay interest in excess of the rate and manner prescribed by the statute as well as for a period anterior to the publicat ion of Section 4(1) notification under the Act. The parameter for initiation of the proceedings is the publication of the notification under Section 4(1) of the Act in the State Gazette or in an appropriate case in District Gazette as per the local amen dments. But the condition precedent in publication of the notification under Section 4(1) in the appropriate gazette. That would give legitimacy to the State to take possession of the land in accordance with the provisions of the Act. Any possession o therwise would not be considered to be possession taken under the Act. In fact, a situation has been envisaged under Section 48(2) of the Act, namely, that when proceedings under the Act were initiated and in the midstream the proceedings were dropped, the owner who has been deprived of the enjoyment of the property, the statute prescribes the remedy of determination of the amount of compensation due to the owner for the damages suffered by the owner in consequence of the notice of the proceedings unde r the Act. The statute also imposes liability on the State to reimburse the costs incurred by the owner to defend the proceedings under the Act. The Act is a self-conscience cannot be extended in awarding interest, contrary to the provisions of the sta tute."

40. While applying the above pronouncement, we hold that interest, if any, could be ordered to be paid only from the date of Section 4(1) Notification under Section 34 of the Land Acquisition Act. The award of the learned Subordinate Judge .P.s are modified and accordingly the point is answered against the land owners and in favour of The Land Acquisition Officer.

41. As regards the next point, namely, direction to pay

additional amount in terms of Section 23(1-A), the said provision came to be introduced by Central Act 16 of 1984. In this case, Notification under Section 4(1), which is the relevant ich the market value has to be arrived at, has been issued on 19.02.1990.

42. In Siddappa Vasappa Kuri v. Special Land Acquisition Officer reported in (2002) 1 SCC 142 = to A.I.R 1 SCC 2951, the Supreme Court laid down that for the purpose of calculating the amount to be awarded under Section 23(1-A) the date of of the Section 4 (1) is the starting point and the terminal point being the date of the award or the date of taking possession which ever is earlier. But in the present case, the date of taking possession was anterior to Section 4(1) Notification. The refore, that terminal is not available. But in this case, award came to be passed on 07.02.1992 and from the date of passing of award, we hold that the land owners are entitled to additional compensation under Section 23(1-A) for the period, namely, fro m 19.02.1990 to 07.02.1992.

43. In A.I.R. 2001 SC 2951, (Siddappa Vasappa Kuri v. Special Land Acquisition Officer) the Supreme Court has held thus:
" 6. It is, as we see it, clear from Section 23(1-A) that the starting point for the purposes of calculating the amount to be awarded thereunder, at the rate of 12 per centum per annum on the market value, is the dateof publication of the Section 4 fication. The terminal point for the purpose is either the date of the award or the date of taking possession, whichever is earlier. In the present case, possession of the land having been taken prior to the publication of the Section 4 notification, t hat terminal is not available. The only available terminal is the date of the award. The High Court, therefore was in no error in holding that the appellants were entitled to the additional compensation under Section 23(1-A) for the period 8.3.1991 to 6 .2.1993.

7. Section 23(1-A) admits of no meaning other than the meaning that we have placed upon it. There is no room here for any construction other than that given above. It is only where a provision is ambiguous that a construction that leads t that is more just can be adopted. Having regard to its clear terms, Section 23(1-A) must receive the only construction it can bear. We are of the view, therefore, that the law has been correrctly laid down in the decision in Special Tahsildar (LA), P.W .D. Schemes V. M.A. Jabbar and that it has not been correctly laid down in Asstt. Commr. Gadag Sub-Division V. Mathapathi Basavannewwa and, for that matter in State of H.P. V. Dharam Das."

The award of additional amount under Section 23(1-A) is answered thus.

44. Being a compulsory acquisition, the claimants are entitled to solatium. Section 23(2) came to be amended even during the year 1984. Notification was issued under Section 4(1) of the Act in the present

case on 19.02.1990. Therefore, t ers are entitled to solatium at the rate of 30% on the market value in consideration of the compulsory nature of acquisition.

45. On the point as to whether the claimants are entitled to interest on solatium, the recent pronouncement of the larger Bench of Supreme Court in Sundar V. Union of India reported in 2001(7) SCC 211 is on the point. Hence solatium also, ts/land owners are entitled to interest. Therefore, following the Supreme Court, we held the land owners are entitled to payment of interest on solatium as well.

46. In the result,

a) We fix the market value of the acquired land as here under:
i) in respect of Dry lands at Rs.51,000/- per acre;
ii) in respect of irrigated dry lands at Rs.57,000/- per acre;
iii) in respect of wet lands at 63,000/- per acre.

b) We affirm the award of compensation in respect of improvements like underground pipe line, other structures or buildings awarded by the Courts below.

c) We set aside the award of compensation in respect of wells;

d) We direct payment of solatium at 30% with interest from the date of Notification under Section 4(1) of the Land Acquisition Act.

e) We direct payment of additional amount at 12% per annum under Section 23(1-A) of the Act for the period from 19.02.1990, the date of Section 4(1) Notification till 07.02.1992, the date of passing of award on the total value.

f) We direct payment of interest from 19.02.1990, at 9% p.a. for a period of one year from the date of Section 4(1) Notification and at the rate of 15% p.a. after the expiry of one year till payment of compensation while giving credit to s already made from time to time.

47. With the above directions, both the appeals are allowed in part, cross objection is dismissed and all connected pending C.M.P.s are also dismissed. The parties shall bear their respective costs in these appeals.

Index:Yes
Internet:Yes

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To

1. The learned Subordinate Judge, Sankari (with records)
2. The learned Subordinate Judge, Salem (with records)
3. The Record Keeper, V.R. Section, High Court, Madras.